INSIGHT

YEAR 12 *Trial Exam Paper*

2013

LEGAL STUDIES

Written examination

Sample responses

This book presents:

- high-level sample responses
- mark allocations
- tips on how to approach the questions.

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Question 1a.

Sample response

Court of Appeal of the Supreme Court of Victoria.

Mark allocation: 1 mark

- 1 mark for identifying the court as the Court of Appeal or, more correctly, the Court of Appeal of the Supreme Court of Victoria.

Question 1b.

Sample response

The impact of distinguishing a case on the facts is that it allows judges in lower courts to avoid having to follow a precedent of a higher court that would otherwise be binding. In distinguishing the facts of a precedent from those in the case before her/him a judge is saying that the precedent does not apply because its facts are not similar to those in the current case.

Mark allocation: 2 marks

- 2 marks for discussion of the impact of distinguishing a case on the facts, i.e. that if the judge in a lower court decides there is a material difference between the facts of the precedent and the facts in the current case, then the precedent is not binding.

Question 1c.

Sample response

The plaintiff must prove the case 'on the balance of probabilities'.

Mark allocation: 1 mark

- 1 mark for including the phrase 'on the balance of probabilities' in the description of the standard of proof.

Question 1d.

Sample response

Having a court hierarchy is administratively convenient as it allows minor matters to be dealt with in lower courts while serious or complex matters are dealt with in the higher courts. Court procedures are less formal and complex in the Magistrates' Court which means that minor matters can be dealt with more quickly and at lower cost than matters in higher courts.

Mark allocation: 2 marks

- 1 mark for identifying an advantage of having a court hierarchy.
- 1 mark for the explanation of the advantage.

Tips

- *For part **a.** the correct title of 'Court of Appeal' is the 'Court of Appeal of the Supreme Court of Victoria'.*
- *The key word in part **b.** is 'impact'. It is not sufficient to merely describe 'distinguishing'.*
- *In part **c.**, although an answer that just said 'on the balance of probabilities' would score one mark, it is advisable to write answers in sentence form.*
- *In part **d.** other advantages that could have been discussed include: allowing a system of appeals to operate, allowing precedent to operate, and specialisation.*

Question 2a.

Sample response

Signing a petition is one method that can be used to try to bring about a change in the law. A petition is a document addressed to parliament requesting the law be changed on a matter of importance to the people who have signed the petition. A signed petition is given to a member of parliament who then tables it in parliament.

The actions of individuals and groups are only likely to be effective in bringing about a change in the law if politicians believe there is widespread public support for the change.

Petitions rarely succeed in influencing change in the law because most petitions tabled in parliament only contain a relatively small number of signatures, which does not demonstrate widespread public support for the subject matter of the petition. While there is no guarantee that a petition with many thousands of signatures would be successful in influencing a change in the law, it would at least be taken seriously by politicians.

Mark allocation: 3 marks

- 1 mark for identifying and describing a method used by individuals and groups to influence change in the law.
- 2 marks for discussing the effectiveness of the method chosen. Students should address when it would be effective and when it would not be effective when commenting on its effectiveness.

Question 2b.

Sample response

One other role of the Legislative Council in the Victorian Parliament is to act as a house of review. Most bills pass the Legislative Assembly before moving to the Legislative Council where they are debated and voted on. The Legislative Council can also refer bills to committees for review and possible amendment before voting on them.

Mark allocation: 2 marks

- 2 marks for the quality of the explanation of one other role of the Legislative Council. No marks would be awarded for merely identifying a role.

Tips

- *The effectiveness of any method will depend on the extent to which the method used indicates widespread public support for the proposed change in the law.*
- *Other methods students could mention include demonstrations and the media.*
- *Students often underestimate the detail required when answering questions worth two marks. For example, in explaining the Legislative Council's role as a house of review an answer would not receive full marks if it did not include a comment about the Council's use of committees to review bills passed by the Legislative Assembly.*

Question 3

Sample response

All of the Commonwealth's law-making powers are listed in the Constitution and are known as specific powers. There are two types of specific powers: exclusive powers and concurrent powers. An exclusive power is one that only the Commonwealth can legislate in, such as currency. Therefore whenever the Commonwealth Parliament legislates in areas of exclusive power the same laws apply throughout Australia because the states have no power to legislate in these areas.

Concurrent powers are shared powers; that is, both the Commonwealth and the states can make laws in these areas (for example, taxation), which explains why sometimes there are different Commonwealth and state laws in the same area. However, whenever the Commonwealth and states enact conflicting legislation in an area of concurrent power, section 109 of the Constitution states that the Commonwealth law will prevail to the extent of the inconsistency.

The power to make laws in all those areas not specifically mentioned in the Constitution remains with the states, and the Commonwealth has no direct power to legislate in these areas. These powers are known as residual powers, and include areas such as criminal law and transport.

Mark allocation: 4 marks

- 2 marks for the discussion of the statement. Students must clearly show why some laws are the same throughout Australia (some specific powers are exercised exclusively by the Commonwealth and Commonwealth laws apply throughout the whole of Australia), and why some laws are different from state to state (some specific powers are shared concurrently by the Commonwealth and the states; also the Commonwealth has no direct power to legislate in areas of residual power).
- 2 marks for the explanation. The explanation must use correct terminology (specific powers, exclusive powers, concurrent powers and residual powers) and correct examples must be used (**Note:** taxation is an example of a concurrent power, not an exclusive power). Mention must also be made of the effect of s. 109.

Tips

- *To discuss this statement requires students to assess its accuracy and provide evidence to support their point of view.*
- *Students can either discuss the statement separately or incorporate their discussion of the statement into their explanation of how the Constitution allocates law-making powers between the Commonwealth and the states.*
- *Discuss each of the types of law-making powers in a separate paragraph.*
- *Students need to refer to the effect of s.109 in resolving conflicts arising from the use of concurrent law-making powers.*

Question 4

Sample response

The introduction of a Koori Court within the Magistrates' Court is a recent change that has helped improve the effectiveness of the legal system by improving the fairness of sentencing hearings for indigenous offenders.

The Koori Court is a sentencing court and it functions in a less formal way than a traditional court, as it recognises the cultural differences between indigenous and non-indigenous people. By recognising and catering to cultural differences, the Koori Court aims to reduce the number of indigenous Australians sentenced to terms of imprisonment.

People charged with serious criminal offences often wait many months before their case comes to trial. It has been suggested that such cases would be resolved more quickly if committal hearings were abolished.

The purpose of a committal hearing is to establish that there is sufficient evidence against an accused to justify sending them to trial. Some people argue that a committal hearing merely duplicates what the Office of Public Prosecutions (OPP) already does. The OPP, which is an independent statutory body, has to approve the prosecution of people charged with serious indictable offences. It withholds approval where it believes cases are weak.

Abolishing committals could help improve the effectiveness of the legal system because cases would be ready for trial sooner, which could lead to the more timely resolution of disputes.

Mark allocation: 4 marks

- 2 marks for describing one recent change and one recommendation for change.
- 2 marks for linking an element of an effective legal system to the discussion of how the recent change and the recommendation for change attempt to improve the effectiveness of the legal system.

Tips

- *In discussing how the recent change and the recommendation for change attempt to improve the effective operation of the legal system, students need to provide a reason why the change and recommendation have/will improve the effectiveness of the legal system.*
- *Discuss each change in a separate paragraph.*
- *Link each change to one of the elements of an effective legal system.*

Question 5a.

Sample response

When a state agrees to refer a residual power to the Commonwealth, the parliament of that state passes legislation authorising the referral of the law-making power to the Commonwealth. The Commonwealth Parliament then passes legislation agreeing to accept the transfer from the state.

The impact of a referral of power is an expansion of the Commonwealth's law-making powers and a corresponding reduction in the law-making powers of the state, or states. However, as there have been only a few instances where states have been willing to hand over any of their law-making powers to the Commonwealth, the referral of law-making powers has had little impact on the division of law-making powers between the Commonwealth and the states.

Mark allocation: 3 marks

- 1 mark for explaining the process, i.e. the state referring a law-making power must legislate to authorise the transfer of power and the Commonwealth must legislate to accept the transfer of power.
- 1 mark for each of the following two points:
  - The transfer of a residual power from a state to the Commonwealth changes the division of law-making powers in that it increases the law-making powers of the Commonwealth and reduces the law-making powers of that state.
  - The Commonwealth's law-making powers have not been greatly increased through the referral process because there have only been a few instances where states have agreed to refer any of their law-making powers to the Commonwealth.

Tip

- *Answer each part of 5a. in a separate paragraph.*

Question 5b.

Sample response

The overall impact of High Court interpretation of the Commonwealth Constitution has been to increase the law-making powers of the Commonwealth at the expense of the states. The Commonwealth is now the dominant player in Australia's federal system of government.

The *Franklin Dam case* illustrates the expansion of Commonwealth law-making power. That case related to a decision by the Commonwealth to prevent the Tasmanian Government from building a dam. The area around the dam site had been included on the World Heritage List and the Commonwealth, having signed and ratified an international treaty guaranteeing to protect such sites, enacted legislation to protect it from development. The Tasmanian Government challenged the constitutional validity of this legislation, arguing that the Commonwealth lacked the authority to legislate in this area as dam construction was a residual power. The High Court decided that in exercising its external affairs power (an exclusive power), the Commonwealth had the authority to legislate in areas that would ordinarily be part of a state's residual powers in order to implement the terms of an international treaty. The impact of this decision was to increase the law-making powers of the Commonwealth by allowing it to legislate in an area that had previously been considered to belong entirely to the states.

Mark allocation: 5 marks

- 2 marks for the description of a relevant High Court case.
- 2 marks for the explanation of the outcome and impact of the decision in the case.
- 1 mark for mentioning that High Court decisions in cases that have interpreted the Constitution have resulted in a significant expansion of the Commonwealth's law-making powers.

Tips

- *Many students write too much about the facts of cases. Examples should be used to illustrate a point; they should not be the focus of the answer. Appropriate use of examples can greatly enhance an answer. Students are encouraged to practise writing answers using examples and show them to their teacher to get feedback.*
- *Examples of other High Court cases that could be used include: the* Roads case, *the* Uniform Tax case *and* Brislan's case.
- *It is not uncommon for students to use inappropriate examples of High Court cases when answering questions relating to interpretation of the Constitution. Careful reading of questions will help avoid the use of inappropriate examples. Part* ***b.*** *of this question relates to High Court decisions that have affected the division of law-making powers between the Commonwealth and states, so do* <u>not</u> *use High Court cases that relate to the protection of rights, such as* Roach's case, *the* DOGS case, *the* Theophanous case *or the* Australian Capital Television Pty Ltd case.

Question 6

Sample response

The strict rules of evidence and procedure followed in the adversary system of trial are designed to ensure that both sides have an equal opportunity to present their case and that the trial is fair.

However, there are aspects of this feature that both enhance and limit the effectiveness of the adversary system. Its effectiveness is enhanced by the fact that litigants are able to use the services of lawyers to prepare and present their case. Barristers know the rules of evidence and procedure, are skilled in advocacy and are likely to present a party's case effectively.

On the other hand, litigants who cannot afford to pay for lawyers and have to represent themselves are likely to be greatly disadvantaged because the complexities of the rules of evidence and procedure are such that it is not practical for most people to argue their own case effectively.

Despite this, on balance, the rules of evidence and procedure do help to ensure trials are conducted fairly as the rules are applied equally to both parties.

Mark allocation: 4 marks

- 3 marks for the quality of discussion of the strengths and weaknesses of this feature of the adversary system of trial.
- 1 mark for the conclusion as to the effectiveness of this feature of the adversary system of trial.

Tips

- *To 'critically evaluate' means to look at both sides <u>of the same point</u> (i.e. the strengths and weaknesses) and come to a conclusion about which is the better argument.*
- *Remember to include your opinion about the effectiveness of this feature of the adversary system of trial.*

Question 7

Sample response

The discovery phase of civil pre-trial procedure requires the parties to disclose documents and facts about their claims and defences.

A request for discovery of documents requires the other side to pass on copies of any documents it intends to use at trial. Failure to disclose relevant documents means they will not be admitted at trial.

Each side can submit written questions, known as interrogatories, to the other side. Interrogatories are limited to issues relevant to the dispute and must be answered under oath.

Sometimes, further questions arise out of answers to interrogatories and when this happens, if the court agrees, a party may be required to attend a meeting where they will be asked questions in an oral examination.

In personal injury cases it is common for the defendant to require the plaintiff to attend a medical examination by medical experts nominated by the defendant.

One purpose of the various aspects of discovery is to provide the parties with further information to enable them to assess the relative strengths and weaknesses of their case. If the plaintiff decides her/his case is weak, s/he may decide to withdraw the writ, or if the defendant's case is weak, s/he may make a settlement offer. Furthermore, discovery of documents and the exchange of interrogatories serve the purpose of clarifying the issues in dispute and avoiding wasting valuable court time asking unnecessary questions. This has the further benefit of helping to reduce legal costs.

Mark allocation: 3 marks

- 2 marks for the depth of knowledge of the pre-trial procedure described.
- 1 mark for the description of each of its purposes.

Tips

- *Although the Study Design specifically requires students to have knowledge of the pleadings, discovery and directions hearings, students could choose to write about other civil pre-trial procedures, such as pre-trial conferences or notice of trial.*
- *The general aim of civil pre-trial procedure is to encourage the parties to settle their dispute without having to go to court. Each of the steps in the pre-trial process has its own purpose, but all contribute to achieving this aim.*

Question 8

Sample response

There are several situations in which courts make law. When a case in a superior court relates to an issue for which there is no existing precedent or statute law, the decision of the court in that case will establish a precedent that may be followed in future cases. Likewise when a superior court, in deciding a particular case, expands an existing precedent to cover a new situation, a new legal rule is created. Another situation in which courts make law is when they interpret words in statutes. Whenever a superior court interprets a word or words in a statute for the first time, that interpretation establishes a precedent. Statutes are usually written in general terms to reflect a particular policy, in the knowledge that courts will decide whether the words used in the statute apply to particular situations on a case-by-case basis.

A precedent established by a superior court remains the law on that matter unless or until it is overruled by a higher court, or parliament enacts legislation to overrule it.

Mark allocation: 4 marks

- 2 marks for discussion of creating a precedent/expanding a precedent.
- 2 marks for discussion of statutory interpretation.

Tips

- *This question is not about the operation precedent – its focus is on the process by which courts make law in our legal system.*
- *To 'explain' the role of courts in the law-making process requires students to give details about when courts make law.*

Question 9

Sample response

I believe the Commonwealth Constitution provides an effective means of protecting the rights of Australians. Those who argue to the contrary usually base their argument on the fact that only a few rights are protected by the Constitution. In my view this misses the point.

The effectiveness of the Constitution as a means of protecting rights lies in the fact that protected rights, few though they may be, are well protected. This is because they are entrenched in the Constitution, which means they are enforceable by the High Court when a case is brought before them, and can only be changed by changing the words in the Constitution at a referendum, something that is difficult to achieve.

Mark allocation: 3 marks

- This question would be marked 'globally' which means it is the quality of the overall argument and the evidence provided that will determine the mark awarded.
- To be awarded full marks an answer must mention that rights entrenched in the Constitution are enforceable by the High Court and can only be changed by passing a referendum.

Tips

- *Questions that ask students: 'To what extent do you believe…' can be answered in a number of different ways. Students can say 'yes' they agree or 'no' they disagree, and present evidence in support of their position, or they can say 'to some extent' and provide evidence in support of both sides of the issue.*
- *Students who take the 'to some extent' position would firstly explain why they agree in part with the proposition, then comment on the 'however' aspect, and conclude with an overall statement summing up their position.*
- *The key word in this question is 'means'. The question does not require discussion of the types of rights protected by the Constitution; its focus is the effectiveness of the Constitution as a mechanism for protecting rights.*
- *It helps markers if students commence their answer to this kind of question by stating the extent to which they agree or disagree with the proposition. Doing so informs the marker of the point of view of the student and as s/he reads the rest of the answer it is easy for her/him to assess the quality of the evidence provided to substantiate the point of view expressed.*
- *Other strengths which could be discussed to illustrate the effectiveness of the Commonwealth Constitution as a means of protecting the rights of Australians include:*
    - *Structural protection of rights – i.e. the Constitution protects basic principles of our democratic system of government, namely, responsible government, representative government and the separation of powers.*
    - *New rights can be declared to exist by a High Court when appropriate cases arise – these are known as implied rights.*
- *Students who have taken the view that the Commonwealth Constitution is an ineffective means of protecting the rights of Australians could discuss the following:*
    - *Changing the Commonwealth Constitution to better protect the rights of Australians in response to changes in attitudes and technology is difficult because of the requirements of s.128.*
    - *Because only a few rights are protected by the the Commonwealth Constitution, individuals and groups must rely on parliament and/or the courts to protect rights. In the case of parliaments this would be time-consuming, and in the case of courts it would be both time-consuming and expensive.*

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Question 10

Sample response

Error	***Explanation***
Melinda pleaded guilty to armed robbery and had a committal hearing.	There would be no committal hearing as Melinda has pleaded guilty. Committal hearings are only held when an accused charged with an indictable offence which cannot be tried summarily pleads 'not guilty'.
At the committal hearing the magistrate sentenced Melinda to three years' imprisonment.	Sentencing does not occur at a committal hearing. The purpose of a committal hearing is to determine whether there is sufficient evidence against an accused to justify sending the matter to trial in either the County Court or the Supreme Court. Sentencing occurs after the trial if the accused is found guilty or at a sentencing hearing if the accused pleaded guilty.
Melinda appealed to the County Court.	Because Melinda pleaded guilty to the serious indictable offence of armed robbery, a sentencing hearing would have been held in the County Court, at the conclusion of which the judge would have imposed a sentence. Appeals from the County Court are heard in the Court of Appeal of the Supreme Court of Victoria.
At the appeal the judge instructed the jury about the law in the case before sending them out to consider their verdict.	In appeal cases there is never a jury. Appeals in the Court of Appeal of the Supreme Court of Victoria are decided by a panel of three or five judges.

Mark allocation: 4 marks

- 2 marks for identifying two errors.
- 2 marks for explaining why each is incorrect.

Tip

- *Read the passage carefully and underline each error as you identify it. Choose two errors and briefly identify each and write a meaningful explanation of why they are incorrect.*

Question 11

Sample response

It is a legitimate part of the democratic process that individuals and groups are able to pressure or influence members of parliament to change the law. Groups and individuals use various methods to publicise issues of concern to them in an effort to influence members of parliament to change the law. Parliamentarians encourage the public to make their views on issues known as this helps in the development of public policy and the content of proposed new laws.

However, sometimes parliamentarians are unduly influenced by the actions of prominent individuals and/or pressure groups. Talk-back radio 'shock jocks' and well-funded, organised pressure groups sometimes exert considerable influence even though there may be little evidence that the views they express are widely shared by the community.

The legislative process used to pass bills in parliament is thorough and allows ample opportunity for proposed legislation to be considered before being voted on. Bills are debated at length and if weaknesses are identified, changes can be made. For example, amendments are most commonly made at the committee stage where bills are debated clause by clause. Also, the upper house can refer bills to a committee for review before it votes on them.

However, the legislative process can be undermined if the government holds a majority of seats in both houses. It is not often the case in Australia that a government controls both houses, but when it happens it is possible that parliament could become a 'rubber stamp' and approve bills without properly reviewing them. The government can use its majority in each house to limit debate and force bills through parliament.

Mark allocation: 3 marks

- 3 marks each for critical examination of each strength.

Tips

- *To 'critically examine' is similar to 'critically evaluate'. Therefore to fully answer this question students need to provide evidence to show how each of the strengths mentioned promotes the effectiveness of parliament as a law-maker. Weaknesses associated with these strengths, supported by evidence, must also be included and an assessment made as to the overall merits of these strengths.*
- *In critically examining the statement, students can also point out that the debate process surrounding the passage of bills, whilst a strength, can also be a weakness undermining parliament's effectiveness as a law-maker. When the government does not control the upper house (which is usually the case) it is possible for the opposition, minor parties and independents to frustrate the government's legislative agenda by voting against bills, or insisting on amendments the government doesn't like.*

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Question 12

Sample response

I disagree with the statement. There is a wide range of civil disputes and deciding which method of dispute resolution is the most appropriate will depend on the nature of the particular dispute. In my view, judicial determination is the most effective method to resolve some civil disputes, while mediation and conciliation are effective in resolving others.

Courts now routinely refer civil litigants to mediation or conciliation and only proceed to a formal court hearing if the parties are unable to reach an agreement. Likewise, VCAT first uses mediation to resolve disputes and will only make a judicial determination if this fails.

There are several reasons why mediation and conciliation have proved to be effective methods of resolving some civil disputes. They both encourage the parties to work cooperatively to solve their dispute, and they help improve access to the legal system because they involve little or no cost to the parties. Furthermore, because participation in mediation and conciliation is voluntary, agreements reached are likely to be accepted by the parties because they were actively involved in the settlement process. This can be seen as a 'win win' situation.

However, in some situations a judicial determination may be the most effective method of resolving a civil dispute. For example, although some serious or complex disputes are resolved using mediation, others go to court and are resolved by way of a judicial determination. The formal processes of the adversary system of trial allow the parties to be represented by counsel, and counsel will present evidence and arguments to thoroughly explore the issues. At the conclusion of the trial a legally binding decision will be made and the matter will be at an end (unless there are grounds for appeal).

Furthermore, because mediation and conciliation are voluntary methods of dispute resolution they depend on the willingness of both parties to agree to participate for them to have any chance of resolving a civil dispute. If one party refuses to participate, the only option available is to go to a formal hearing in VCAT or a court, where a judicial determination will be made.

Also, agreements made through mediation or conciliation are not legally binding on the parties, therefore if one of the parties has a change of heart and decides to walk away from their agreement the only alternative would be to go to court to resolve the dispute. The court would make a judicial determination which would be legally binding on the parties.

Mark allocation: 8 marks

- A lot of information is required to fully answer this question and the discriminating factor would be the quality of the discussion, particularly the evaluation of the effectiveness of judicial determination, mediation and conciliation.
- This question would be marked 'globally', i.e. rather than allocating specific marks to the various parts of the question, the marker would assess the overall quality of the answer, taking into account whether all aspects of the question have been addressed. The first sentence of the stimulus material is key to answering this question and must be adequately addressed.

Tips

- *When answering a question that asks: 'To what extent do you agree with…' students have a number of options. Although the sample answer disagrees with the statement, it is open to students to present persuasive arguments agreeing with the statement or agreeing with it to some extent. Provided material used in the answer is relevant and all parts of the question are answered, all options are capable of being awarded full marks.*
- *To 'evaluate the effectiveness' of judicial determination, mediation and conciliation requires students to discuss the strengths and weaknesses of these methods of dispute resolution and comment on which is the more persuasive – the strengths or the weaknesses.*
- *Note the use of the word 'some' in the sample answer. Its use is significant because it acknowledges that the type of civil dispute and the attitude of the parties are important factors in determining the effectiveness of each method of dispute resolution.*
- *It would be very useful for students to spend up to two minutes doing a plan before commencing to write an answer to this question as a lot of information is required to fully answer it. Questions worth 6 marks or more often require a descriptive as well as an analytical response, and doing a plan assists in ensuring that the answer is coherent and covers all aspects of the question.*
- *Students who agree with the statement could discuss the following points to support the contention that 'Judicial determination is no longer an effective method of dispute resolution in civil disputes':*
    - *Going to court is expensive both in terms of lawyer's costs and court fees.*
    - *The time taken to resolve civil disputes in courts is usually lengthy due to the formal processes followed in courts. This contributes to the high cost of legal services.*
    - *A judicial determination can be a cause of resentment and dissatisfaction as it is a decision that is imposed on the parties. In many instances one party wins and the other loses, but sometimes the decision may be a compromise that leaves both parties dissatisfied.*

Question 13

Sample response

I agree with the statement. Before a person can be considered for jury service there are several criteria they must satisfy. A person must be at least 18 years of age, an Australian citizen and registered on the electoral roll.

There are several factors that influence who is selected for jury service. Potential jurors are selected at random from the electoral roll and sent a questionnaire. The purpose of the questionnaire is to determine the eligibility of a person to serve on a jury. Some people are disqualified (e.g. an undischarged bankrupt), some are ineligible to serve (e.g. a serving police officer), some have the right to be excused (e.g. a person living more than 50km from the court) and others can apply for a deferral or exemption from jury service (e.g. a student preparing for exams). Although excluding people in these categories has the effect of reducing the size of the jury pool, it does not have a significant impact and the vast majority of people left eligible after these exclusions ensures a wide cross-section of the community remains in the jury pool. Random selection means that women and men from all over Melbourne, from different socioeconomic backgrounds and of differing ages are included in the pool of potential jurors, and is likely to ensure that juries reflect current community attitudes and values.

There are also factors that influence the empanelling of juries. For example, before a criminal trial begins, potential jurors in the jury pool are divided into jury panels and sent to a courtroom. Both the prosecution and defence have an opportunity to challenge potential jurors. A juror who is challenged is excluded from serving on the jury in that trial. Each side has an unlimited number of challenges for cause (i.e. there is a valid reason why the potential juror should be excluded); however there is little opportunity for either side to challenge for cause because so little is known about potential jurors (apart from their occupation, which is read out at the time their juror number is read out). In criminal cases each side also has six peremptory challenges. These are challenges where no reason has to be given. A decision to use a peremptory challenge may be made because counsel has a negative 'vibe' about a potential juror, or it could be because of their age, gender, appearance or body language.

Peremptory challenges should be abolished because they can be used to stereotype people and legitimise prejudice. One of the strengths of the jury system is that it provides an opportunity for the public to directly participate in the legal system. To allow potential jurors to be excluded at the whim of lawyers is not only unfair, it is demeaning, and has the tendency to make juries less representative of the community at large. If a potential juror has survived the selection process and their number is called out in the jury room, and they have not been challenged for cause, they should be empanelled on the jury.

Mark allocation: 10 marks

- This question would be marked 'globally' which means it is the quality of the overall argument that will determine the mark awarded. However, all parts of the question must be answered, that is, a) state the extent to which the student agrees or disagrees with the statement, b) provide evidence to justify whether the factors that influence the selection and empanelling of juries ensure that juries reflect a wide-cross section of the community or not, and c) justify why peremptory challenges should be abolished or retained.

Tips

- *When answering a question that asks: 'To what extent do you agree with…' students have a number of options. Although the sample answer agrees with the statement it is open to students to present persuasive arguments disagreeing with the statement or agreeing with it to some extent. Provided material used in the answer is relevant and all parts of the question are answered, all options are capable of being awarded full marks.*
- *Questions that ask you to comment on the extent to which you agree or disagree with something can be answered in the first person.*
- *The last paragraph of the sample answer is quite opinionated, but that is acceptable when answering this type of question provided the comments are rational and the student does not get carried away or respond emotionally.*

END OF SAMPLE RESPONSES